

13. (Amended) The method according to claim 6, further comprising:

representing a by-product using a set of the values of said attributes of use, said by-product being produced by said manufacturing series activities and excluding works-in-process produced by said manufacturing series activities; and managing the by-product as a product.

R E M A R K S

Reconsideration of this application as amended is respectfully requested.

THE REJECTION

Claims 1-12 were rejected under 35 USC 101 as being directed to non-statutory subject matter. Specifically, on page 3 of the Office Action the Examiner asserted that "While the method presented may provide useful and concrete results, no tangible result is provided."

This rejection, however, is respectfully traversed with respect to amended claim 6 and each of claims 2-5 and 7-13 now depending therefrom.

THE CASE LAW

Admittedly, as pointed out by the Examiner, a disembodied data structure and method of making it are merely manipulation of an abstract idea and non patentable subject matter. In re Wamerdam, 31 USPQ2d 1754 (Fed.Cir. 1994).

As is probably well known to the Examiner, however, in State Street Bank & Trust Co. v. Signature Financial Group, Inc., 47 USPQ2d 1596 (Fed.Cir. 1998), the CAFC held that the determination of a final share price by a data processing system was a "useful, concrete, and tangible" result.

Similarly, as is also probably well known by the Examiner, in AT&T Corp. v. Excel Comm., Inc., 50 USPQ2d 1447, the CAFC held that generating a message record including an indicator having a value useful for billing purposes was also a "useful, concrete and tangible" result.

THE CLAIM AMENDMENTS

Claim 6 has been amended to incorporate the subject matter of (now canceled) claim 1 therein, and to clarify that the method of the present invention produces a manufacturing process for a particular product of a series product by arranging a manufacturing series activities in a prescribed sequence.

Claims 2-6 and (non-elected) claim 13, moreover, have been amended to depend from amended independent claim 6. And since non-elected claim 13 now depends from an elected claim, it is

respectfully requested that claim 13 be rejoined to the elected claims.

It is respectfully submitted that no new matter has been added, and it is respectfully requested that the amendments to the claims be approved and entered.

It is respectfully submitted, moreover, that amended claim 6 now clearly does recite a "tangible" result - namely, a manufacturing process for a product. In this connection, it is respectfully submitted that a manufacturing process is clearly not a disembodied data structure as in In re Wamerdam. And it is respectfully submitted, moreover, that the manufacturing process produced by the method of the claimed present invention is also clearly "useful" and "concrete".

Accordingly, it is respectfully submitted that amended claim 6 and each of claims 2-5 and 7-13 depending therefrom now all recite statutory subject matter under 35 USC 101.

* * * * *

In view of the foregoing, entry of this Amendment, allowance of the claims and the passing of this application to issue are respectfully solicited.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Holtz', written in a cursive style.

Douglas Holtz, Esq.
Reg. No. 33,902

Frishauf, Holtz, Goodman, Langer & Chick, P.C.
767 Third Avenue - 25th Floor
New York, New York 10017-2023
Tel. No. (212) 319-4900
Fax No. (212) 319-5101
DH/sdf